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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 | ) ) ) | CC Docket No. 96-98 |
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| Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers | ) ) ) | CC Docket No. 95-185 |

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OPPOSITION OF BELL ATLANTIC
TO PETITIONS FOR RECONSIDERATION

Edward D. Young, III
Of Counsel

Michael E. Glover
Leslie A. Vial
James G. Pachulski
Lawrence W. Katz
1320 N. Courthouse Road
8th Floor
Arlington, Virginia 22201
(703) 974-2944

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## OPPOSITION OF BELL ATLANTIC[1] TO PETITIONS FOR RECONSIDERATION

### I. Introduction and Summary

Having gotten far more than they genuinely could have thought was reasonable out of the initial round of this proceeding, the long distance incumbents and their allies now only want more, more, more. They want still more preemption of state regulatory prerogatives, they want still more rules favoring them as competitors rather than favoring evenhanded competition, and they want still more onerous and unnecessary burdens that apply only to the incumbent LECs with whom they must compete. But their latest pleas for special favors consist of a variety of claims that are beyond the Commission's jurisdiction to adopt, that are flatly inconsistent with the Act, and that already have been considered and rejected by the Commission. Consequently, their reconsideration petitions uniformly must be denied.

[1] The Bell Atlantic telephone companies serve Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia and West Virginia.

## II. Petitions to Reconsider and Extend the Commission's Pricing Rules Are Beyond the Commission' Jurisdiction and Fundamentally Flawed to Boot.

As the Court of Appeals has now tentatively agreed, the Commission does not have jurisdiction to adopt preemptive rules governing the pricing of interconnection arrangements between local competitors. On the contrary, in the absence of a privately negotiated agreement, the 1996 Act expressly assigns to the "State commission[s]" the task of "establish[ing]" and "determin[ing]" the "just and reasonable" rates to be charged for interconnection, access to unbundled network elements, transport and termination of traffic, and the wholesale rates for retail telecommunications services. 47 U.S.C. § 252(c)(2), (d). Lest this express assignment of authority leave any doubt, however, in passing the 1996 Act, Congress deliberately declined to amend section 2(b) of the 1934 Act, which independently establishes that nothing in the Act can be construed to "give the Commission jurisdiction with respect to" these fundamentally intrastate matters. 47 U.S.C. § 152(b); Louisiana PSC v. FCC, 476 U.S. 355 (1986).

Nonetheless, having once led the Commission into error, the long distance incumbents now urge the Commission to dig itself an even deeper hole by extending its preemptive pricing rules well beyond those that already have been stayed. Remarkably, they go so far as to ask the Commission to prescribe not only additional pricing standards that are binding on the states, see AT&T Pet.; MCI Pet., but also to prescribe the procedural rules that must be followed by the states in the arbitration proceedings where they set those prices. If they had their way, the Commission would dictate both who gets access to proprietary cost information during the state proceedings, and the terms of any protective orders or confidentiality agreements that the states can use to safeguard this competitively sensitive information. AT&T Pet. at 24-26. Without belaboring an issue that will be resolved on appeal, suffice it to say for present purposes that the Commission simply does not have jurisdiction to adopt the rules urged by the petitioners here any more than it had jurisdiction to adopt the original pricing rules that already have been stayed. Moreover, as is addressed in the discussion that follows, and apart from their fundamental jurisdictional infirmity, the various arguments made by the petitioners on pricing issues here are flawed in a number of additional respects.

### A. The Commission Should Reject Limits on the Ability of Incumbents to Recover Their Non-Recurring Costs.

The prize for the most extreme new argument on behalf of the free lunch crowd goes hands down to AT&T. According to AT&T, the Commission should set uniform, nationwide rules for non-recurring charges that parallel the stayed TELRIC pricing standards for recurring charges. Under AT&T's view of the world, incumbents should be required to set non-recurring charges based not on the actual cost they incur to perform a given function, but only on the cost that would be incurred by a hypothetical, ideally efficient network that is designed expressly to serve multiple providers in an ideally efficient manner. AT&T Pet. at 16-17. But that's not all. AT&T also claims that any costs that are actually incurred to upgrade this ideally efficient network or its support systems in order to provide unbundled elements should be borne, not by the carrier or carriers requesting the elements, but by all providers, including the incumbent, based on the number of lines served by each. AT&T Pet. at 11-15.

This is silliness gone mad. Under AT&T's surreal approach to pricing, the non-recurring charge to provide an unbundled loop would have to be calculated based on the hypothetical cost of an ideally efficient provider, using ideally efficient technologies, that are ideally configured to serve multiple carriers, employing ideally efficient employees, subject to ideally efficient dispatch and access procedures, equipped with ideally efficient tools and vehicles, with ideally efficient supplies of parts, and the list goes on. What's more, under AT&T's theory, any start up costs that would be incurred by this ideally efficient provider to develop systems to make unbundled loops available, or even to perform costly physical tasks such as conditioning loops at the request of a competitor, would have to be charged to all providers -- an approach even AT&T concedes will force incumbents to "bear the largest absolute amount of one-time costs." AT&T Pet. at 15. And adding insult to injury, any costs of upgrading the incumbent's existing network or support systems to this hypothetically most efficient state "may not themselves be considered in determining prices," at all. AT&T Pet. at 11.

But this is more than just silliness; it is illegal. The Act specifies that prices for interconnection and unbundled network elements shall be set "based on [the incumbent's] cost," plus a "reasonable profit." 47 U.S.C. § 252(d)(1). Yet, the pricing standards proposed by AT&T would purposefully deny the incumbents the ability to recover the non-recurring cost that they actually incur to provide unbundled elements, let alone provide the opportunity to earn a reasonable profit above that cost. Moreover, the net result of this patently unlawful pricing standard would be to force other customers to bear costs imposed uniquely by these competitors, and to effectively subsidize the likes of AT&T. This result simply cannot be justified under any possible theory.

B. The Commission Also Should Reject Further Limits on the Ability of Incumbents to Recover Their Costs of Providing Unbundled Elements.

Not satisfied with denying incumbents the ability to recover their non-recurring costs, AT&T's appetite is still not satisfied. It also wants to establish still more preemptive national rules to dictate specific costs that can and cannot be recovered by the incumbents when they provide unbundled elements, and to dictate added procedures that must be followed by the states in setting those prices.

First, AT&T asks the Commission to adopt a presumption, binding on the states, that currently prescribed depreciation rates and rates of return must be used in any cost studies submitted to state arbitrators. AT&T Pet. at 21-22. But as a number of economists explained during the initial round of this proceeding, this presumption is wildly wrong. When a competitor purchases an unbundled element such as a loop or a switch, it may choose to use that element for only a short period of time while it deploys facilities of its own. As a result, having engineered its network to serve the competitor's demand, the incumbent is likely to receive revenues for use of that element for only a short period of time, perhaps as short as a year or two and sometimes less. This dramatically shortens the period of time over which the incumbent has to recover the cost of those elements, and substantially increases the risk incurred to provide them. Under these circumstances, the presumption proposed by AT&T is simply irrational.

Second, AT&T asks the Commission to adopt uniform formulas designed to prevent incumbents from recovering in unbundled element prices any of the cost of spare capacity that might be used in the future. AT&T Pet. at 22-24. But the simple fact is that this spare capacity benefits all current providers. To take just a single example, if a particular (unbundled) loop fails, the fact that there is spare capacity means that service can quickly be restored and at a far lower cost than stringing an all new loop. Yet, while competing providers unquestionably benefit from the existence of this capacity, AT&T would have the incumbent alone incur the bulk of the cost of providing it. This is nonsense. The competitors who benefit should pay the cost incurred for their benefit. And, if a dispute arises about the precise amount they should pay, only state arbitrators are in a position to resolve it based on the unique facts of the particular circumstance before them.

Third, AT&T urges the Commission to bar incumbents from recovering the costs of providing operations support systems separately from the costs of loops or other elements of the network, and to bar recovery of all such costs whenever the Commission's interim proxy rates are used. AT&T Pet. at 28-29. The cost of providing and operating these support systems for the benefit of competitors, however, is a cost that is incurred <u>in addition</u> to the cost providing the various physical elements of the actual telephone network, such as loops and switches. The incumbents cannot, consistent with the Act, be denied the ability to recover these costs, and whether they are recovered as part of the price of providing individual elements, or through a separate charge is an issue that can only reasonably be resolved through negotiations and state arbitrations.

Fourth, AT&T asks the Commission to mandate a uniform price of $5 for any non-recurring activity that can be accomplished through electronic means. AT&T Pet. at 18-20. Apart from the fact that the Commission itself has conceded that it does not have authority to set actual rates, FCC Sup. Ct. Br. at 21-24, the basic premise of AT&T's argument is wrong. It assumes that there will be many non-recurring activities that involve the simple flip of a single switch; there will not. Even where a particular non-recurring activity is performed electronically, that is not the end of the process since corresponding records and billing changes then have to be made as well. And AT&T's claim that many requests will be to transfer customers "as is" (which could only arise in the resale context) is particularly disingenuous, since it is AT&T that has vociferously demanded that the service provided to resale customers be reconfigured at great cost to route traffic to AT&T's operator services and directory assistance platforms.

Fifth, AT&T wants the Commission to prescribe a uniform formula for calculating the average unbundled loop rate in a given state, and to choose, for example, between calculating an average for all loops, or calculating an average for all unbundled loops. AT&T Pet. at 26-28. But this simply is not a decision that rationally can be made on a uniform basis nationwide. Even putting jurisdiction aside, as a matter of sheer practical necessity, it is a decision that has to be made by state arbitrators taking all relevant local circumstances into account.

### C. The Commission Should Reject Efforts to Further Skew the Wholesale Pricing Rules.

As Time Warner has demonstrated at length, the existing rules, if allowed to take effect, would have produced "excessively discounted rates" that artificially favor one class of competitors, long distance incumbents entering as resellers, over other more efficient facilities-based competitors. TW Comm. Pet. at 2. As a result, these rules would actually deter efficient facilities-based entry, to the benefit of the long distance incumbents and to the detriment of consumers. Nonetheless, the long distance incumbents and their allies here urge the Commission to modify its resale rules in a number of respects to provide still further advantages to their unique class of non-facilities-based entrants. On every score, however, their arguments must be rejected.

First, MCI argues that the Commission should increase the amount of the already inflated default discounts, based largely on changes it proposes to the Commission's avoided cost estimates. MCI Pet. at 12-15. But MCI's argument is moot in light of the Commission's concession that it lacks authority to set actual discount rates, FCC Sup Ct. Br. at 21-24, a concession that necessarily invalidates its default proxies. In any event, the default discounts were not based solely on the Commission's own avoided cost calculations to begin with. The Commission also took into account "the experience of those state commissions, Illinois and Georgia, that have undertaken or approved detailed avoided cost studies under the pricing standard of section 252(d)(3) of the 1996 Act." First Report and Order, ¶ 931. To grant MCI's request, the Commission would have to disregard the very state wholesale rate determinations on which it relied, because they fall below the range proposed by MCI.

Second, MCI urges the Commission to adopt uniform, national rules governing the withdrawal of services to ensure that decisions "are made consistently, instead of varying from state to state." MCI Pet. at 7-8. But MCI ignores the fact that the services themselves vary from state to state, and, as the Commission itself emphasized, such state variations are appropriate given "the universal service implications of an incumbent LEC's proposal to withdraw a retail service." First Report and Order ¶ 968. There simply is no reason to reach a different conclusion here.

Third, MFS, which recently announced its merger with the country's fourth largest long distance incumbent (WorldCom), now claims the long distance incumbents and other resellers should be allowed to resell "grandfathered" services to customers that would be ineligible to receive the service from the incumbent. MFS Pet. at 22-25. But the net effect of its proposal would be to preclude incumbents from ever "grandfathering" a service offering. When a service is "grandfathered," it is available only to existing customers, not to any new customers. Under MFS' proposal, any new customer also would be able to obtain the "grandfathered" service indirectly through a reseller and thus defeat the state regulatory reason for "grandfathering" the service.

Fourth, both AT&T and MCI ask the Commission to do an about face and declare that rates for promotional offerings of limited duration now qualify as retail rates that are subject to a further wholesale discount. AT&T Pet. at 29-31; MCI Pet. at 8-12. But as the Commission correctly recognized, these short term promotions are not the types of generally available "retail rates" that Congress had in mind. This is especially true given the fact that limited duration promotions "serve procompetitive ends through enhancing marketing and sales-based competition," and "their procompetitive effects will outweigh any potential anticompetitive effects." First Report and Order ¶ 949. There is therefore no reason for the Commission to reverse course.

D. The Commission Should Not Modify its Reciprocal Compensation Rules to Artificially Benefit Some Competitors, and CMRS in Particular.

Some petitioners urge the Commission to modify its reciprocal compensation rules in ways that are designed to provide them with an artificial advantage over the incumbent and other local interconnectors alike. Again, however, even if these were matters within the Commission's jurisdiction to address (which they are not), the petitioners' arguments could not withstand scrutiny.

First, some CMRS providers ask the Commission to expand the scope of local traffic in CMRS-LEC interconnection arrangements beyond even the overly broad MTAs already adopted. CTIA Pet. at 2-3; Comcast Pet. at 8-10; Cox Pet. at 8-11. But this would merely worsen the discrimination between wireline and wireless competitors that was mandated by the Commission's original rules. Indeed, the MTA-based definition of local CMRS traffic is significantly larger than the local exchange boundaries used to define local landline traffic. As a result, landline carriers will pay different -- and likely higher -- access-based rates for the same traffic only because they are not CMRS providers. Rather than make this situation worse, the Commission should remedy it by eliminating its rules mandating use of the MTA as the local calling area for CMRS providers, and instead allow state commissions to define uniform local calling areas for all competing local providers. LECC Pet. at 16-17.

Second, some CMRS providers also ask the Commission to require that, whenever a cellular provider hands off traffic from its mobile switching office to a local exchange carrier at its tandem, a tandem-to-tandem interconnection charge should apply. In effect, this would treat the cellular provider's switch as a tandem, and presents the same problem as the Commission's decision to treat a wireline competitor's switch as a tandem whenever it serves the same geographic area as the incumbent's tandem. LECC Pet. at 14. The incumbent is allowed to charge a slightly higher rate for tandem interconnection only because it will have to incur the cost of double switching that traffic -- once at the tandem and once at the end office. But local interconnectors, whether wireless or wireline, generally do not double switch terminating traffic and the same rationale simply does not apply. As a result, rather than automatically treat a competitor's switch as a tandem, the Commission should modify its rules to provide that tandem rates only apply in instances where the carrier terminating the call, whether wireline or wireless, has both tandem and end office switches.

Third, in a flawed attempt to justify receiving payments of "reciprocal" compensation, a pair of paging providers urge the Commission to reverse its determination that paging providers do not offer local exchange service or exchange access. PageNet Pet. at 13-17; AirTouch Pet. at 5-12. But the Act's definition of "telephone exchange service" only extends to a "comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service." 47 U.S.C. § 153(47) (emphasis added). One of the petitioners here has already admitted that paging services "are generally one-way non-interactive communications and are neither intended to be, nor do they supplant, basic two-way interactive voice telephone services we know as 'plain old telephone service.'" Reply Comments of PageNet, CC Dkt 96-98 at 7-8 (filed May 30, 1996).

Fourth, these and other paging companies ask the Commission to set specific rates that they can charge local exchange carriers that deliver calls to the paging company.

PageNet Pet. at 3-13; AirTouch Pet. at 13-25; Arch Comm. Pet. at 6-10. But, aside from the fact that the Commission can't set interconnection rates for local traffic, there is no rational basis for requiring LECs to pay any compensation to paging carriers. Because paging traffic flows almost exclusively one-way, funds would flow in one direction only to provide a subsidy from the local exchange carrier's customers to the paging company. It simply makes no sense to talk about "reciprocal" compensation in this context. Rather than granting these petitions, therefore, the Commission instead should hold that paging providers are not entitled to reciprocal compensation. LECC Pet. at 17-18.

Fifth, Comcast and Vanguard, yet again, ask the Commission to declare that Section 332 vests it with exclusive jurisdiction over intrastate rates for interconnection between local exchange carriers and CMRS providers. Comcast/Vanguard Joint Pet. at 22-23. But the provision of the Act they rely upon, section 332, simply does not support their claim. On the contrary, that provision merely limits the power of the states to "regulate the entry of or the rates charged by any commercial mobile service...." 47 U.S.C. § 332(c)(3)(A) (emphasis added). It does not extend to the rates that CMRS providers pay to the local exchange carriers for interconnection. In fact, the Commission itself recently held that state "regulation of the interconnection rates charge by landline telephone companies to CMRS providers ... does not appear to be circumscribed in any way by Section 332(c)(3)."[2] There is no basis for the Commission to reverse this finding in the wake of Congress vesting states with jurisdiction over local interconnection arrangements.

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[2] Petition on Behalf of the Louisiana Public Service Comm'n for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana, 10 FCC Rcd 7898, 7908 (1995).

## III. Petitions to Adopt Additional Unbundling Requirements Should Be Rejected.

Several petitioners also ask the Commission to reconsider unbundling issues that were thoroughly addressed in the initial round of these proceedings, and to lard onerous new regulatory burdens on top of those it already created. For the most part, these petitioners merely rehash arguments that already were rejected, and any new claims they do raise are meritless.

### A. The Commission's Should Reaffirm Its Decision To Leave Sub-Loop Unbundling To Negotiations Between Carriers And To The States.

Some petitioners recycle the argument here that sub-loop unbundling is technically feasible, and ask the Commission to reconsider its decision to allow states to address the issue on a case-by-case basis. MCI Petition at 16-20; MFS Petition at 9-11; ALTS Petition at 11-12.[3] But the key factual predicates for the petitioners' arguments are simply wrong, and they fail to address other fundamental concerns that support the Commission's decision.

As Bell Atlantic and others previously demonstrated, there are no generally accepted industry specifications or national standards for loop sub-elements, or for the physical interconnection of sub-elements in the field.[4] As a result, it simply makes no sense to require sub-loop unbundling in the abstract.

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[3] ALTS's argument that LECs should be required to offer access to multiplexing equipment at any technically feasible point, ALTS Petition at 7-8, is really a request for a particular kind of sub-loop unbundling, see id. at 7, n. 2, and is subject to the same problems as the other types of sub-loop unbundling addressed here.

[4] See Comments of Bell Atlantic, CC Dkt 96-98 at 24-25 (filed May 16, 1996); Declaration of Raymond F. Albers, CC Dkt, 96-98 at ¶ 19 (filed May 16, 1996) ("Albers Decl."); Declaration of Dr. Charles L. Jackson, CC Dkt 96-98 at ¶ 6 (filed May 16, 1996).

Nonetheless, MCI claims that feeder and distribution facilities can readily be unbundled because, "in the vast majority of incumbent LEC loops," they are connected to one another at a feeder/distribution interface, or "FDI." MCI Petition at 16. But in the major metropolitan areas in Bell Atlantic's region, approximately 80% of the loops are direct feeder -- without distribution plant -- all the way from the customer's premises to the central office. Albers Decl. at ¶ 20. Under these circumstances, there is no FDI, there is no logical interface point, and there is no way to interconnect without splicing directly into the feeder cable and risking damage to the physical integrity of the network. Id. If fact, even MCI concedes that the network reliability concerns present in these circumstances should be addressed through negotiations and state arbitrations. MCI Petition at 16-17. And the fact that, in Bell Atlantic's network at least, such cases are the rule, not the exception, shows precisely why MCI's petition should be denied.

In addition, even in the minority of cases where both feeder and distribution are used, MCI's claim that "connecting distribution pairs to a new entrant's feeder" is no different from connecting them to the incumbent's feeder is wrong. MCI Petition at 16; see also MFS Pet. at 9-10. MCI conveniently ignores the fact that existing interface points -- including field cross-connect boxes and controlled environmental vaults -- have not been designed to accommodate multiple interconnections by multiple carriers. As a result, incumbents would have to design, manufacture and install all new field cross-connect boxes that would provide carriers with separate physical access only to their portions of the boxes (similar to physical collocation requirements in central offices).[5]

MCI also claims that an incumbent's inability to do remote testing on unbundled sub-loops is a "red herring." It claims the incumbent doesn't need this capability because the interconnector "will exercise 'overall responsibility' for the reliability of a loop comprised of the new entrant's feeder and an unbundled distribution element." MCI Petition at 18-19. But this is flatly inconsistent with the Commission's order, which held that the incumbent is not relieved "of the duty to maintain, repair, or replace the unbundled network element." First Report and Order, ¶ 268; see also id., ¶ 258. And absent the ability to do remote testing, the incumbents also would likely find it impossible to provide elements that are "at least equal-in-quality to what the incumbent LECs provide themselves...." Id., ¶ 313; Albers Decl., ¶ 21.

Finally, MFS asks the Commission to declare that the definition of an unbundled loop includes access to the network interface device, or "NID." MFS Pet. at 4-5. If the Commission does so, however, it also should make clear that carriers are not required to place NIDs where they do not now exist. This is significant because only about 30 percent of Bell Atlantic's access lines have NIDs. While Bell Atlantic is, of course, willing to negotiate with a carrier that wants NIDs installed, the requesting carrier must pay the cost to do so.

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5 At the same time, some mechanism would have to be developed to permit distribution pairs to be disconnected from one carrier's feeder (in its part of the box) and re-connecting them to another carrier's feeder (in a different box or part of the box). Albers Decl., ¶ 20 For customers changing from one interconnector to another, for example, all three carriers involved would have to coordinate the timing of every customer change between carriers, an unmanageable task if customers change local carriers with anything approaching the frequency that they change long distance carriers.

B. The Commission Should Reject Demands For Burdensome and Unnecessary Reporting Requirements.

Refusing to take no for an answer, TCG here rehashes its previously rejected demands to impose elaborate performance reporting requirements, and goes so far as to ask the Commission to require these reports to be filed quarterly, on an exchange area-by-exchange area basis, for four classes of customers, for the LEC itself, for its affiliates, and for each interconnecting competitive LEC individually. TCG Pet. at 4-6; see also WorldCom Pet., at 8-10. These proposals would serve only to impose burdensome and unnecessary requirements on its competitors, however, and should again be rejected.

Providing the multifaceted reports demanded by the petitioners would be both costly and burdensome. In Bell Atlantic's case, much of the information that they claim to want is not even tracked. As a result, in order to provide the detailed reports described by TCG, Bell Atlantic would have to incur the time and expense to create whole new systems to track the information, detracting from other work that is necessary to meet the Act's many requirements. Nonetheless, TCG is undaunted and baldly asserts that the costs of developing these systems and performing this additional work should be treated as "an ordinary cost of doing business." TCG Pet. at 6.

Moreover, imposing mandatory reporting requirements is unnecessary. Any legitimate requests for reporting requirements and performance standards can and should be worked out between parties in negotiations, with resolution by the states in arbitration if necessary. First Report and Order, ¶ 311. In fact, Bell Atlantic recently reached an agreement with TCG to provide reports that are more reasonable in scope and that are based on available information. As a result, there is simply no reason to impose mandatory reporting requirements, let alone to require onerous new reports that cannot even be compiled from available information.

### C. The Commission Should Not Require LECs To Waste Time And Effort Developing "Interim" Mechanized Interfaces To Operations Support Systems.

Along with several other petitioners, Sprint argues that "it is unrealistic" to expect the local telephone industry to be able to comply with the requirement to provide electronic access to operations support systems by January 1, 1997. Sprint Pet. at 5; see also LECC Pet. at 4-5 (urging adoption of a waiver procedure for carriers that cannot meet the deadline for some systems). Even if it were possible, however, "Sprint believes that it is better to have industry-wide standards for these interfaces." Sprint Pet. at 5. Sprint therefore asks the Commission to establish a deadline for the development of an industry standard and to postpone the deadline for implementation of that standard. Id. at 6.

Although Bell Atlantic is doing its utmost to meet the January 1, 1997 deadline, it has no objection to Sprint's request that the deadline be extended. Sprint also argues, however, that LECs should be required "to implement reasonable CLEC requests for interim interfaces." Id. at 5 (emphasis added). Such a requirement would result in wasting substantial time, effort, and money that could more productively be directed toward developing and implementing national standards. It should, therefore, be rejected.

Based on Bell Atlantic's experience, it will take at least four months after a request is made by a carrier to implement even an "interim" mechanized interface. That time is needed for the requesting carrier and the LEC to develop the necessary specifications and interfaces, to implement the systems, and to ensure that their respective systems can communicate smoothly. The time frame could be longer depending on a variety of factors, such as whether either carrier needs to acquire or upgrade equipment in order to make the systems work. The development and implementation of such systems can also impose a substantial cost on both carriers. Carriers should not be required to expend the resources and time needed to develop "interim" interfaces if they are going to be required to scrap those systems shortly thereafter to implement a system meeting a national standard.

By the same token, however, should the Commission decide not to adopt a general extension of its deadline, and instead grant case-by-case waivers as needed, it cannot reasonably expect carriers to swap out any systems they have deployed in the interim once national standards are finally adopted. It would be equally wasteful to require carriers to develop interfaces under tight deadlines, only to require that the expenditures of time and money necessary to do so be repeated a short time later.

D. Additional Requests for Further Unbundling Also Should Be Rejected.

The petitioners here also ask the Commission to add a variety of still further unbundling requirements to those that already exist. Again, however, their petitions are largely a rehash of claims rejected in the prior proceeding, and the few new arguments that they do make are wrong.

First, MCI renews its previous claim that the Commission should "further unbundle" the incumbents' advanced intelligent network capabilities by providing direct access to AIN switch triggers. This is the same argument that the Commission already rejected based on the exhaustive records compiled here and in its Intelligent Network proceeding. First Report and Order, ¶ 493. The only purported justification that MCI can come up with for reversing that decision is its claim that some mediation functions already exist, and that providing MCI with direct access to switch triggers will allow it to provide a nationwide, AIN-based service. MCI Pet. at 24-27. As demonstrated in the attached declaration of Donald E. Albert ("Albert Decl."), however, the brief list of SS7 mediation functions pointed to by MCI are simply inadequate to provide the needed safeguards. And if MCI is genuinely interested in offering a nationwide service, then it should participate cooperatively in the proposed industry-wide project to determine the requirements to provide access and interconnection among AIN systems.

Second, AT&T and MCI renew their previously rejected claim that the Commission should require incumbents to provide "dark fiber" as an unbundled network element. AT&T Pet. at 35-36; MCI Pet. at 20-23. The Commission, however, quite properly declined to find that dark fiber qualifies as a network element under the Act. Indeed, dark fiber is nothing more than stored fiber optic cable, and is not a facility or equipment that is being "<u>used</u> in the provision of a telecommunications service." 47 U.S.C. § 153(29) (emphasis added). On the contrary, it is <u>unused</u> equipment that is being warehoused to meet forecasted customer demand, and ensure that the incumbent will be able to meet its carrier of last resort obligations without the protracted delay or inordinate expense that would be incurred for the emergency construction of additional capacity.

Third, one petitioner asks the Commission to define "the provision of billing and collection to be a 'network element.'" Pilgrim Tel. Pet. at 3. But billing and collection services are in no sense a piece of equipment or a facility that is part of the incumbent's network, and simply do not qualify as a "network element." In addition, the Commission determined more than 10 years ago that "billing and collection services provided by local exchange carriers are not subject to regulation under Title II of the Act."[6] And nothing in the 1996 Act requires any different treatment of these services. See § 601 ("[T]his Act shall not be construed to modify Federal, State or local law unless expressly so provided in such Act or amendments.") (uncodified provision).

Fourth, in a virtually indecipherable request for "clarification" of the unbundling requirements, WorldCom appears to ask the Commission to make substantial revisions in the existing tariff structure for shared transport services. WorldCom Pet. at 1-7. WorldCom appears to request a single usage-sensitive rate for both dedicated and tandem-switched transport. But this would mean nothing more than a return to the "equal charge per unit of traffic" rule that the Commission abandoned four years ago -- a rule that required large carriers to subsidize the costs of smaller carriers. Transport Rate Structure and Pricing, 7 FCC Rcd 7006 (1992). Moreover, WorldCom's request runs directly counter to the Commission's unbundling rules, which require services to be unbundled into separate network elements, not effectively rebundled to a greater degree than even current end-to-end services.

## IV. The Commission Should Reaffirm That Collocation Is Required Only For Transmission Equipment, and Not Switching Equipment.

In an attempt to circumvent the Commission's decision to permit collocation only for transmission equipment, two petitioners assert that they should nonetheless be allowed to collocate switching equipment so long as it also contains some transmission component. MFS, for example, asserts it should be allowed to collocate packet switches and

6 Detariffing of Billing and Collection Services, 102 FCC2d 1150, 1169 (1986).

data switches, MFS Pet. at 11-13, while both AT&T and MFS assert they should be allowed to collocate remote switches. AT&T Pet. at 31-34; MFS Pet. at 13-14.

The petitioners' sole rationale for why the Commission should reverse itself on this score is that the transmission functions performed by these switches are somehow quantitatively greater than their switching function. As demonstrated in the attached Albert Declaration, however, this is not necessarily true since these devices are all designed to serve primarily as switches. Albert Decl., ¶¶ 7-10. And despite AT&T's claims to the contrary, some types of remotes that AT&T has asked to collocate in state proceedings would exhaust the available collocation space in nearly half of Bell Atlantic's most requested central offices. Albert Decl., ¶ 9. As a result, allowing AT&T and MFS to collocate switching equipment in these offices would prevent later arriving competitors from obtaining space in these offices.

But the petitioners also fail to come to grips with a more fundamental problem with their claims. The Act only authorizes collocation for equipment that is "necessary for interconnection or access to unbundled network elements." 47 U.S.C. § 251(c)(6) (emphasis added). Switching equipment, however, is simply not necessary for this limited purpose.[7] As a result, allowing competitors to collocate switching equipment is not authorized by the Act, and would constitute an unauthorized taking of private property in violation of the 5th Amendment. See Bell Atlantic Telephone Cos. v. FCC, 24 F.3d 1441 (D.C. Cir. 1994). Consequently, the Commission should deny the petitions filed by MFS and AT&T.

[7] In a similar context, the Commission has limited the functions that may be included in multiplexers that are placed on customer's premises as part of the network. International Business Machines Corp., 58 Rad Reg 2d (P&F) 374, 379 (1985).

## CONCLUSION

For all the foregoing reasons, the petitions filed by the long distance incumbents and their allies must be denied.

Respectfully submitted,

Edward D. Young, III
Of Counsel

Michael E. Glover
Leslie A. Vial
James G. Pachulski
Lawrence W. Katz
1320 N. Courthouse Road
8th Floor
Arlington, Virginia 22201
(703) 974-2944

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# ATTACHMENT 1